

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

(1) KEVIN YESZIN, and)
(2) PAUL HARRISON,)
)
Plaintiffs,)
v.)
)
)
(1) NEOLT, S.p.A., an Italian corporation,)
)
)
)
)
)
Defendant.)

Case No. 5:12-cv-00315-L
Hon. Timothy D. Leonard

**PLAINTIFFS' RESPONSE TO DEEFENDANT, NEOLT, S.P.A.'s
MOTION TO DISMISS FOR LACK OF PERSONAL
JURISDICTION AND IMPROPER VENUE**

NOW COME the plaintiffs, Kevin Yeszin and Paul Harrison, by their respective counsel, and in response to defendant's Motion to Dismiss for Lack of Personal Jurisdiction and Improper Venue, state that:

1. By separate motion immediately preceding this response, plaintiffs seek a voluntary dismissal of this matter pursuant to FRCP 41(a)(2) since jurisdiction has been established over the defendant, Neolt, S.P.A. in the Federal Court for the Eastern District of Michigan. [Dkt. no. 10].

2. It is therefore unnecessary to proceed with this matter, which was only filed to preserve the statute of limitations in the event that the Michigan Federal Court declined jurisdiction.

3. If the Court dismisses the case as requested in plaintiffs' motion, that will render moot defendant's Motion to Dismiss based on both lack of personal jurisdiction and improper venue.

4. Even if the Court were to address defendant's Motion to Dismiss on its merits, its request for a dismissal with prejudice should be denied because dismissal for lack of jurisdiction be it subject matter or personal, are required to be dismissals *without prejudice*. See, e.g., *Arocho v. Lappin*, 461 Fed. Appx. 714, 719-20 (10th Cir. 2012). Defendant cites no authority whatsoever for its prayer for relief that the dismissal be *with prejudice*.

WHEREFORE, for the reasons stated herein as well as in the Memorandum of Law filed in support of Plaintiffs' Motion to Dismiss Without Prejudice and Without Costs Pursuant to FRCP 41(a)(2) [Dkt. no. 10], plaintiffs request that defendant, NEOLT, S.P.A.'s motion for dismissal be denied as moot and that, should the Court address it on the merits, dismissal be granted without prejudice and without costs.

Respectfully submitted,

s/Robert C. Margo
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Dated: August 20, 2012

CERTIFICATE OF SERVICE

Robert C. Margo hereby certifies that on the 20th day of August, 2012, he served the foregoing paper on opposing counsel by filing same through the ECF filing system, which will automatically serve all counsel of record in this case.

s/ Robert C. Margo